

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
March 25, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:02 p.m. on Wednesday, March 25, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Scott Hammond
Senator Aaron D. Ford

COMMITTEE MEMBERS ABSENT:

Senator Ruben J. Kihuen (Excused)
Senator Tick Segerblom (Excused)

GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Senatorial District No. 7

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Greg Cox, Director, Department of Corrections
Sheryl Foster, Deputy Director, Department of Corrections
John Collins, Re-Entry Administrator, Department of Corrections

James Scally, Lieutenant, Manager, Casa Grande Transitional Housing,
Department of Corrections
Edward Bevilacqua, Director of Education, Larson Training Centers
Angelo Cassaro, A. A. Cassaro Plumbing
Vanessa Spinazola, American Civil Liberties Union of Nevada
Steve Yeager, Office of the Public Defender, Clark County
Sean Sullivan, Public Defender's Office, Washoe County
Greg Martin, Progressive Democrats of Nevada
Sylvia Smith, President, Nevada Land Title Association
Zach Ball, Nevada Land Title Association
Rocky Finseth, Nevada Land Title Association
Russ Dalton, Nevada Land Title Association
Mark Brewer, Acceptance Capital Mortgage Corporation
Regan Comis, Nevada Judges of Limited Jurisdiction
Ben Graham, Administrative Office of the Courts, Nevada Supreme Court

Chair Brower:

I will open the hearing on Senate Bill (S.B.) 294.

SENATE BILL 294: Expands authorization for certain offenders to have access to telecommunications devices under certain circumstances. (BDR 16-282)

Senator David R. Parks (Senatorial District No. 7):

I have a written statement giving a brief explanation of S.B. 294 ([Exhibit C](#)).

Chair Brower:

It looks like you have a lot of support for this bill, and it is the right type of support. It is always encouraging when the State agency impacted by a bill supports it.

Greg Cox (Director, Department of Corrections):

We support S.B. 294. Employment is important in reducing recidivism. The most important thing we want to convey to the Committee is how important it is to give inmates the ability to apply for jobs. Our inmate population has been impacted by the restriction on telecommunications devices, specifically at the Casa Grande Transitional Housing (CGTH) center and the Northern Nevada Restitution Center (NNRC) in Sparks. In today's job market, applicants no longer fill out paper applications and mail or deliver them to prospective employers;

rather, applications are completed and delivered electronically. In 2015, inmates need to have the ability to complete these electronic documents in order to find employment. We are prohibited from allowing inmates to use cell phones or any other telecommunication devices. Inmates have lost good jobs as a result of this prohibition. Employing inmates helps reduce recidivism, which in turn reduces the likelihood of additional victims.

For many years, I have heard about the burden our inmate population poses on the State and the taxpayers. If inmates are to give back to the community and take care of themselves and their families, it is critical for them to have jobs. Unfortunately, in the last 3 to 4 years, the inmates in CGTH and NNRC have lost the ability to have gainful employment because of this law. Senate Bill 294 will give them the ability to apply for jobs.

In addition, many jobs now require employees to carry and use telecommunication devices such as cell phones or walkie-talkies. In warehouse operations, for example, employees move through huge warehouses, and such devices are required for communication with supervisors and coworkers. Our inmates cannot get that level of employment because of this prohibition.

It is high time for us to move in this direction in regard to employment. Significant data show that if inmates have gainful employment, the likelihood of them coming back to prison is significantly reduced. This bill helps us do just that.

Chair Brower:

This bill allows inmates to use state-of-the-art technology to communicate with prospective employers. It also sounds like it has to do with allowing parolees to use certain types of communication devices. Is that right?

Mr. Cox:

It is designed to help inmates of CGTH and NNRC. *Nevada Revised Statute* (NRS) 209.417 prohibits inmates from possessing or using cell phones or transmitting information to a prospective employer electronically.

Chair Brower:

Does that also apply to current employers?

Mr. Cox:

Yes. We have examples of inmates who would have been promoted at their jobs were it not for this prohibition.

Chair Brower:

Could you give us some of those examples? What type of job? How does the prohibition impact them?

Mr. Cox:

One example would be a person working for an employer like Subway who could become a supervisor and oversee two to three different stores, but the person in that position must have the ability to communicate with those stores. Under NRS 209.417, an inmate in that situation is not permitted to have a cell phone.

Chair Brower:

And that impacts them because they are in what status exactly with respect to the Department?

Mr. Cox:

Basically, this group of inmates is under the supervision of the Department; we are responsible for them. They report back to our institutions, CGTH and NNRC, every day. They go out into the community and work, then they come back to us at night.

Chair Brower:

Are they essentially on a work release?

Mr. Cox:

Correct.

Sheryl Foster (Deputy Director, Department of Corrections):

The reentry of inmates back into society is a crucial issue. Senate Bill 294 addresses employability of inmates, preparing them for continued employment upon release. Electronic devices like computers and cell phones are prominent in everything we do. Job applications, education testing and vocational training are all computer-based in the community.

This prohibition not only involves employment; it also involves inmates' ability to participate in certain educational and vocational training programs that are computer-based. Inmates at NNRC and CGTH are involved in community-based educational programs, vocational training programs and work programs. The fact that they are prohibited from accessing networked computers and portable telecommunication devices restricts their job search efforts, their employability and their job advancement opportunities, as well as their educational and vocational efforts.

With the changes recommended in S.B. 294, we can eliminate this difficult barrier for inmates who are trying to prepare themselves for successful reentry into society. We support this bill wholeheartedly.

We are recommending a small amendment ([Exhibit D](#)) which changes section 1, subsection 3 to specify that the bill only applies to residents of the Department's restitution or transitional housing facilities. This clarifies that it does not impact inmates incarcerated in any of our other institutions or facilities.

Chair Brower:

Senator Parks, do you consider this a friendly amendment?

Senator Parks:

Yes. It narrows down the bill to those types of facilities without specifically naming CGTH and NNRC, the two facilities we currently have.

John Collins (Re-Entry Administrator, Department of Corrections):

The individuals I interact with are the ones most affected by this bill. If an inmate needs to fill out an online job application, my administrative assistant does that, and the inmate is not allowed to see the application before it goes out. It takes an average of 2 hours to fill out one application. Once that application is filled out, any return information given to the inmate has to come to one of our administrative assistants. Every day, my staff must double-check to make sure inmates have not received messages necessary for them to gain that employment or to show up for an interview. This makes it difficult for inmates to achieve employment that will sustain them once they are out of the facility.

Another issue that came up recently has to do with warehouse work. There are huge warehouses in Reno and Las Vegas that are moving away from using walkie-talkies in favor of iPhones to keep in touch with employees. In that situation, inmates cannot take warehouse work where they would receive a substantial rate of pay and thus have a better chance to succeed once they return to the community. Two of our inmates could have been employed by one of the major warehouses, and they were not able to take that work because of the cell phone requirement.

Another situation we run across is with inmates who are journeymen construction workers. Calls come in first thing in the morning telling them if there is work and where it is. These messages are left with one of the officers in the facility, who then has to deliver the message to the inmates. Some of our inmates are capable of being supervisors, working in different areas. That law stops them from being able to accept those positions.

You can see that in my position, I would love for some inmates to have limited access to the Internet so they can be employed. With gainful jobs, they have a better opportunity once they leave the facility to do well and not return.

Senator Harris:

Section 1, subsection 1 of S.B. 294 seems to allow inmates to have telecommunication devices "in a vehicle of the Department." Under what circumstances would an inmate need an electronic device in a Department vehicle?

Ms. Foster:

That portion of the bill specifies that except as provided in the bill, no offender will have a telecommunications device in a vehicle of the Department.

Senator Harris:

Thank you. I misread that provision.

Senator Ford:

I agree with the premise of S.B. 294. What types of monitoring procedures do you anticipate? I could imagine that certain offenders have abused the Internet in the past, and that might even have been what landed them in jail in the first place. What type of regulation do you contemplate to ensure they only use these devices for the purposes stated in section 1, subsection 3 of this

bill—to obtain educational or vocational training, search or apply for employment and perform job duties?

James Scally, Lieutenant (Manager, Casa Grande Transitional Housing, Department of Corrections):

We have employers sign an agreement before offenders are hired that spells out what inmates can and cannot do. With this bill, we have added language to allow us to monitor those devices. We already do site checks in which we come to the place of employment, and we would be able to check the device. We let the employer know up front that the devices can only be used explicitly for vocational training, education or employment.

Senator Ford:

I appreciate the information, but I do not see anything about monitoring in the bill. Maybe it is in your employee agreements, but it is not in the bill.

Lieutenant Scally:

The monitoring part of it is in the policies and procedures that each institution will have in place.

Edward Bevilacqua (Director of Education, Larson Training Centers):

Larson Training Centers is a licensed postsecondary school. Approximately a dozen of our students are from CGTH. We support S.B. 294 and endorse the testimony of Mr. Cox, Ms. Foster and Lieutenant Scally. They have mainly talked about employment that is physical in nature, such as carpentry and working in warehouses. Our school trains people to do jobs that are not primarily physical labor. Many of the residents of CGTH do not have the ability to take on physical jobs; they are too old to become plumbers or carpenters. For this reason, I want to talk about the education aspect of the bill.

With regard to monitoring, when inmates from CGTH or NNRC show up at their jobs, the first thing they have to say to their coworkers is, "Hey, can I borrow your phone?" The ones who suffer from this prohibition are educational facilities that try to get people prepared so they can become employed.

Our school teaches students customer service, sales, marketing, administration and accounting. Those are jobs virtually every employer wants to fill. To become employed, people need to have marketable skills, and most of the people in prison do not have marketable skills. People cannot get employed in

today's world unless they know how to use the Internet. Under statute, it is very difficult to educate people who are incarcerated because they are not able to use the Internet. This bill will facilitate that. We are in complete support of that.

Angelo Cassaro (A. A. Cassaro Plumbing):

I own A. A. Cassaro Plumbing, A. A. Cassaro Construction and a couple bars and restaurants in Las Vegas. I have been in business for 35 years. I am also the president of the Italian American Club of Southern Nevada.

I would echo much of the testimony I have heard today about people looking for employment. We all rely on iPhones and iPads. Everyone who works for me on every level uses such devices to receive schedules, turn in material lists and keep track of their time. We can hire people who do not have computer skills or the ability to have an iPhone for the lowest entry-level positions. However, the chances of them ever moving up the ladder or getting advancement without those skills is virtually none.

We have seen some good, beneficial programs from Mr. Bevilacqua's school. His students, with their education on the Internet and different computer programs, have helped us at the Italian American Club, keeping track of membership, helping with accounting and other tasks. I appreciate that, and I wanted to put that on the record.

Vanessa Spinazola (American Civil Liberties Union of Nevada):

We support S.B. 294, and I agree with all the testimony that has been provided. Studies in New York and Washington, D.C., show that up to 60 percent of former inmates are still unemployed within a year of release. The Office of Justice Programs, U.S. Department of Justice, has done extensive studies on recidivism showing that employment is one of the two factors that reduces recidivism. Part of the purpose of the Department of Corrections is to prepare prisoners for release, and we believe this program will do that.

Steve Yeager (Office of the Public Defender, Clark County):

We support this bill. Our hope is that it will reduce recidivism by enabling ex-offenders to find work.

Sean Sullivan (Public Defender's Office, Washoe County):

We fully support this bill. I often tell clients that if they take full advantage of the education, vocational training and employment opportunities while they are residents of the Department of Corrections, they will be better people coming out. I have gotten many letters from clients telling me I was right.

Greg Martin (Progressive Democrats of Nevada):

We fully support S.B. 294. This is an important bill.

Chair Brower:

I will close the hearing on S.B. 294 and open the hearing on S.B. 239.

SENATE BILL 239: Revises provisions relating to real property. (BDR 9-970)

Senator Michael Roberson (Senatorial District No. 20):

This bill revises the law with regard to home equity lines of credit, deeds of trust, the status of a trustee in certain civil actions and the rights of a bona fide purchaser when a trustee sale of real property is challenged.

I will begin by providing the Committee with a brief summary of the bill. Section 1 provides a mechanism whereby a lender, upon request from a title agent, title insurer or escrow agency, can, with proper notice to a borrower, terminate a home equity line of credit and ensure that any money paid by or on the borrower's behalf after the termination will be credited to the home equity line or related deed of trust until it is paid in full.

Section 2 of S.B. 239 grants a trustee who has been named as a defendant in an action solely because he or she is a trustee and not because of any wrongdoing on his or her part the ability to file a declaration of nonmonetary status in the action. This section also sets forth a process whereby any party to the action may, within reasonable time limits, object to the trustee's declaration and have the court decide the matter. If no objection is raised or the court determines the objection is invalid, the trustee is not required to participate and is not subject to any damages, equitable relief or attorneys' fees or costs. Should new information come to light at any point during the proceedings indicating the trustee should be a participant, the parties may move to amend the pleadings to do so.

Section 3 of the bill allows a beneficiary to substitute as a trustee in order to fully or partially reconvey a deed of trust.

Section 4 of the bill provides that once time has expired to commence an action against a trustee, the rights of a legitimate purchaser in the matter will not be affected.

Senate Bill 239 was brought at the request of the Nevada Land Title Association (NLTA). I have invited several representatives of the NLTA to explain the bill and answer your questions.

Chair Brower:

We appreciate the team effort. This is a subject matter better known to some Committee members than others. I am not an expert in this area and appreciate help in understanding what the bill is trying to do.

Sylvia Smith (President, Nevada Land Title Association):

I am the president of the Western Title Company in Reno. Senate Bill 239 has four main components. Section 1 asks for an amendment to NRS 106, and this has to do with the release of home equity lines of credit for the short term. In our industry, the borrower will be required to sign an affidavit that we will then present to that lender when we request the payoff statement. It can happen that during the escrow process, we will order a demand, but because it is a revolving line of credit, the borrower can borrow more money during the process.

In some instances, the lender has left the line of credit in place, even with documentation instructing the lender to cancel the line of credit, and the borrower has sold the property. This creates a huge issue when we have insured title and a new borrower gets a notice that there is a line of credit. We are asking for this cleanup language to require that under NRS 106, lenders be required to immediately freeze that line of credit, and when they receive our payment taking it to a zero balance, they then release the deed of trust from the property.

In section 2, we are asking for new language to be added to NRS 107. When we close escrow, sometimes we can be named as trustee on a deed of trust unbeknownst to the title company or escrow agency. If there is a lawsuit between the parties, sometimes we will get named in the lawsuit simply

because we were named as trustee on the deed of trust. We are asking for a process by which we can file a document called a declaration of nonmonetary status. There are time lines in this bill to allow for rebuttal. We still would be subject to any recovery, and we could be brought back in at any time deemed necessary.

I can attest personally on this matter. Our company services many rural counties in northern Nevada. We were named in 17 of the Mortgage Electronic Registration System lawsuits that had to do with predatory lending and other issues. But we were named simply because we were listed as trustee on deeds of trust, and Western Title incurred over \$95,000 in legal fees even though we were not named and we had no liability. We were eventually released from all those suits, but it was a huge expense that was passed on to the consumer in the form of higher prices.

In section 3 of S.B. 239, we are asking for an amendment to NRS 107.028 to allow a beneficiary to act as a trustee simply to do a substitution of trustee deed of reconveyance to release his or her recorded interest in real property. The way this statute was written, it is questionable whether a beneficiary could ever act as a trustee. We are just clarifying it to say that a beneficiary can for that purpose.

Section 4 of the bill contains several changes to NRS 107.080. Our main concern is to provide protection for a bona fide purchaser, defined as someone who has bought a property after it has gone through the foreclosure process. The statutes were changed dramatically under S.B. No. 321 of the 77th Session, the Homeowner Bill of Rights, as well as the federal changes that came about under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 that created the federal Consumer Financial Protection Bureau (CFPB), which became effective January 10, 2014. We are asking that 90 days after the trustee sale, the person who purchased the foreclosed property at that sale be considered a bona fide purchaser. The bona fide purchaser is not affected by any civil matters between the initial borrower and the lender.

That is the short version of what we are after. We are looking to ensure that purchasers from foreclosure sales who meet the requirements set forth under NRS 111.180 be granted bona fide purchaser status. We are not trying to take away any rights of foreclosed owners, who can still seek legal remedies through the courts as deemed necessary.

Senator Ford:

Section 2 of S.B. 239 institutes a new procedure by which you can be removed from a lawsuit. We already have a method for that; it is called a motion to dismiss and is covered by Rule 12(b) of the Nevada Rules of Civil Procedure (NRCP). Why is that insufficient for this situation? Why do we need to create a brand-new structure or system by which a specific entity, namely a title company, can get out of a lawsuit when everyone else has to go by Rule 12(b)?

Zach Ball (Nevada Land Title Association):

The key difference is that there have been numerous lawsuits in which trustees are named as parties simply because the trustee's name is on the deed of trust. This judicial mechanism allows a trustee to be removed from the litigation. Requiring the filing of a dispositive motion and requesting dismissal from the litigation is an additional cost that the trustee has to bear. As has already been stated, that cost flows to the consumer, the cost being the attorney's fees and filing costs. I have a case right now in which, for reasons unknown, the trustee was named, and we had to bring a motion to dismiss because the plaintiff's counsel refused to voluntarily dismiss. The difficulty is that the trustee is being named as a party to the litigation with no real understanding as to what that trustee may or may not have done wrong in the litigation.

We believe any concerns are wholly addressed under the language in section 2 of S.B. 239. First, any party to the litigation can oppose the trustee's declaration of nonmonetary status, which the court then considers and issues an order therefrom. Second, at any time during the proceedings, if additional evidence indicates that the trustee intentionally or negligently performed its duties as a trustee, a party may file a motion to amend the pleadings to make those claims against the trustee. Third, after granting the declaration, the trustee is still under the jurisdiction of any order issued by the court, including a restraining order to cease a foreclosure sale.

Based upon that, we believe this is a judicial mechanism that will allow a trustee to get out of a lawsuit, thereby lowering the cost, while at the same time being subject to the court's ultimate disposition or orders that may occur in the case.

Senator Ford:

Thank you for your explanation, but I still have not heard anything that is unique to a title company when it comes to being named in a lawsuit. We all know litigation is expensive, and motions to dismiss are expensive as well. I am not

convinced that there needs to be a special procedure set aside to enable a particular industry to get out of lawsuits. In addition, it sounds like you are essentially shifting litigation costs from the title company to the plaintiff, who must then file a motion with the court to amend the pleadings and things of that sort.

I am not convinced that Rule 12(b) is insufficient to cover this situation. Are there any other states that employ this type of approach when it comes to letting title companies out of lawsuits?

Mr. Ball:

The typical mechanism in Nevada is a stipulation that has all the same requirements, and that is a voluntary dismissal between the plaintiff and the party. You are right that it puts the burden back on the plaintiff, which is where we believe it properly should be. If the trustee has grounds to bring such documentation in front of the court, we believe the trustee should be able to do so. The problem we are having is that trustees are being named without any damning evidence against them. We believe it is proper to shift that burden.

Senator Ford:

I represent defendants all the time, and I have that same argument for every defendant I represent: there is no claim, no cause of action against. I just do not hear anything unique to justify this.

My second question has to do with the section of S.B. 239 that concerns the bona fide purchaser issue. I know that the Federal Housing Finance Agency, which regulates mortgage loan programs Fannie Mae and Freddie Mac, is quite concerned about rights of redemption and bona fide purchaser arguments. Have you had any discussion with the federal entities that would be involved in foreclosure processes for loans they have underwritten to ascertain whether these provisions are going to satisfy their concerns?

Rocky Finseth (Nevada Land Title Association):

I was approached by Jon Sasser of the Southern Nevada Senior Law Program prior to today's hearing about some of the time frames. I indicated to him that we are more than willing to work with him to address those concerns. We have not specifically reached out to the federal government relative to these changes, but it has not been interested in the past, since other Legislators in prior Sessions have worked in this area.

Chair Brower:

Senator Ford raises a good question with respect to the usual Rule 12(b) procedure, when a party believes it should be dismissed because no legal case can be made against it. As I understand this proposal, the proffered process would streamline that process. In other words, in the typical Rule 12(b) context, we have a motion, an opposition, a reply and typically a hearing; all of that takes a lot of time and attorneys' fees. The proposed alternative process would simply be the filing of this declaration, which if flawed in some way could be met with an objection; if not, the matter would end there. Am I understanding the proposed process correctly?

Mr. Ball:

Yes.

Chair Brower:

It streamlines the process without necessarily taking away the right for any party to object to the legitimacy or import of the declaration. Is that right?

Mr. Ball:

That is correct.

Chair Brower:

I do not practice in this area, so let me make sure I understand the nature of the allegation in the complaint we are talking about. What do the allegation and the complaint with respect to the title company typically say? What is the allegation?

Mr. Ball:

It is a myriad of allegations such as wrongful foreclosure or lack of notice, all wrapped into a homeowner's complaint that he or she was dispossessed of or no longer has title to the property. The trustee is named simply because the public record shows that trustee's name.

Chair Brower:

In the typical complaint in which such an allegation is made vis-à-vis the trustee, is it your view that that allegation is a violation of NRCP Rule 11 because there is no basis in fact to allege that the trustee has any liability? Or would you not go that far?

Mr. Ball:

Yes, I have seen Rule 11 issues in those cases. As you may know, Rule 11 is a difficult order to receive from a judge. Judges are often reluctant to grant such requested relief. This bill offers a streamlined process that extricates the trustee. You can get attorneys' fees under Rule 11, but it is difficult.

Chair Brower:

I am not suggesting that Rule 11 would be the proper remedy. I am just trying to get a handle on the nature of these allegations. If they are even close to Rule 11 violations, it seems to me that a streamlined process for extricating the title company might be in order.

Senator Ford:

I am still not clear why the current system does not work. Everyone else in the State comports to Rule 12 when they want to get out of a lawsuit. I am not sure why we want one industry to have the opportunity to bypass Rule 12.

That brings me back to an unanswered question. Does any other state have a structure that lets that one industry, the title company, get out of a lawsuit without having to go through the normal Rule 12(b) procedure?

Mr. Finseth:

I am happy to provide you with some evidence from a couple of other states that have similar protections.

Senator Ford:

There are many changes to time frames in S.B. 239, specifically in section 4, subsection 5, paragraphs (b) and (c). One time frame drops from 45 days to 15 days, another drops from 15 days to 5 days and a third, in subsection 6, increases from 60 days to 90 days. These seem like dramatic changes. There may be an opportunity for some discussion on meeting in the middle on that. I understand the rationale, but I am not convinced that changing the time frames by such substantial amounts is appropriate under the circumstances. Are you amenable to having those discussions?

Mr. Finseth:

Absolutely. Mr. Sasser approached me about meeting on those time frames. We are happy to have those discussions.

Senator Ford:

Mr. Sasser typically represents the ultimate individuals in this process: the homeowners. How does this bill affect homeowners?

Ms. Smith:

The bona fide purchaser language covers the purchaser of the property after the initial borrower has been foreclosed. It applies to the period after the property has gone through the foreclosure process and the property has been bought by another party at the foreclosure sale.

Senator Ford:

Are there any protections for the person undergoing the foreclosure process at the times contemplated in this bill? I did not see any, but I may have missed something. Is there any provision or protection that relates to the homeowner who is undergoing the foreclosure process?

Mr. Finseth:

This body has passed many pieces of legislation in previous Sessions to protect the homeowner, such as S.B. No. 321 of the 77th Session, and at the federal level, the CFPB affords a lot of protections to the homeowner.

Senator Roberson:

This bill covers the period after the foreclosure process has been completed. If original borrowers seek to obtain remedies after foreclosures are completed, they still have those remedies of law; they can still bring actions in court and obtain remedies. This bill contemplates postforeclosure issues.

Senator Ford:

Section 1 deals with home equity lines of credit and includes a notice to the borrower. Is that not preforeclosure, or have I misunderstood?

Ms. Smith:

That provision amends NRS 106 and has to do with freezing the line of credit when we pay it off. It is totally separate from the provisions regarding foreclosure deeds.

Russ Dalton (Nevada Land Title Association):

Section 4, subsection 11 of S.B. 239 adds a further protection for the initial homeowner who has been through a foreclosure. It posts the trustee's deed on

the property itself to give one more notice to potential foreclosed owners so they know absolutely that their homes were foreclosed.

Mr. Finseth:

The Nevada Association of Realtors asked me to express their support for S.B. 239 as well.

Mark Brewer (Acceptance Capital Mortgage Corporation):

We support S.B. 239. I am appearing in support of this bill because it refers to NRS 645A and 645B, and I would like to propose an amendment ([Exhibit E](#), original is on file in the Research Library). I have been in touch with Senator Roberson's office on this matter.

The CFPB's initiating Rules, effective August 1, include ambiguous definitions for "contractual obligation" and "consummation." The ambiguity of the CFPB definitions creates a level of uncertainty that places the Nevada mortgage licensee in jeopardy of civil and criminal penalties if the licensee, the CFPB and/or the Division of Mortgage Lending are in disagreement regarding the interpretation of the CFPB's regulations. A new disclosure form speaks of 3 days prior to consummation of the loan and contractual obligation. Contained in [Exhibit E](#) is an email from the Division stating that they do not have a definition of "consummation" in this context.

Our amendment proposes that S.B. 239 include a definition of "consummation" for a real estate transaction involving a lien against real property. This would go into the definitions sections of NRS 645A.010, 645B.010, 645E.010 and 645F.010. I offer the following language: "Consummation: Occurs after the consumer signs the loan documents and when the lender funds the loan, a contractual obligation exists." This would create a milestone point in which the lenders, mortgage bankers and mortgage brokers of Nevada can have a timing point. The final disclosure statement would be presented to the borrower within 3 days of consummation of the loan.

Chair Brower:

Thank you. We will look at your suggestion and give it due consideration.

Senator Harris:

We all have an idea of what it means to fund a loan, but is there a technical definition? Is it when the money is transferred or when the lender agrees to

make the funds available? You are talking about consummation and having the loan documents signed, and that is discrete. But is the loan funded when the money leaves the lender's control or when it is received by the receiving bank?

Mr. Brewer:

The last three basic phases of the loan application process are signing the note and the trust deed and all according disclosures behind it, funding the loan, and recording the loan. The point of funding is when the lender is allowed to charge interest against the principal amount. The time of funding is when the funds are received by the escrow officer.

Chair Brower:

I have received a letter from William Patterson Cashill regarding a possible problem with S.B. 239 and proposing an amendment ([Exhibit F](#)).

I will close the hearing on S.B. 239 and open the hearing on S.B. 449.

SENATE BILL 449: Revises provisions governing the Advisory Commission on the Administration of Justice. (BDR 14-1140)

Senator Greg Brower (Senatorial District No. 15):

Senate Bill 449 is a Committee bill dealing with the Advisory Commission on the Administration of Justice. This bill proposes we do two things. First, in section 1, subsection 1, paragraph (a), it adds "a municipal judge or justice of the peace, appointed by ... the Nevada Judges of Limited Jurisdiction" to the Commission. I have served on the Commission for the last two interims, and we often discuss issues of import to judges of limited jurisdiction. For this reason, it makes sense to add such a judge to the Commission.

The second change is in section 2 of the bill. Because of the drafting rules that I do not purport to fully understand, the language in that section is not bolded or italicized, but I believe it is all new language.

Nick Anthony (Counsel):

That is true. Section 2 is all new language. However, it is transitory language, much like the section giving the effective date. It does not get codified into statute. Those provisions will only be valid for the next interim, after which they will sunset.

Senator Brower:

Section 2, subsection 1 says that the Commission shall appoint a subcommittee to conduct an interim study concerning parole. Mr. Anthony, was that language passed in the last Session?

Mr. Anthony:

No. Section 2 is entirely new language.

Senator Brower:

We talked about doing a comprehensive, serious study of our parole system in the Commission last interim, but it did not happen. The point of this provision is to ensure that it does happen in the next interim. It is time that we took a look at the issue of parole and whether it makes sense to continue our current parole system. Many states around the Country have done away with it, much like the federal system. It is too big an issue to take up with a bill this Session in my view, but it merits study. If, based upon that study, a bill can be introduced that makes sense in the next Session, it is worth exploring the idea.

Regan Comis (Nevada Judges of Limited Jurisdiction):

We support S.B. 449 and welcome the opportunity to serve on the Commission.

Mr. Yeager:

We support this bill. We particularly appreciate the Committee's willingness to look at the parole issue over the interim. It would be quite a big shift, so it makes sense to bring everyone to the table and have more of a discussion than we can have here in the Legislature.

Senator Brower:

It is a big issue, and it deserves a serious interim study.

Mr. Sullivan:

We support S.B. 449.

Ben Graham (Administrative Office of the Courts, Nevada Supreme Court):

We support this bill and think the interim study of parole issues would be helpful.

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Chair Brower:

We are adjourned at 2:15 p.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	5		Attendance Roster
S.B. 294	C	1	Senator David R. Parks	Written testimony
S.B. 294	D	1	Department of Corrections	Proposed amendment
S.B. 239	E	55	Acceptance Capital Mortgage Corporation	Proposal to Define Consummation of a Real Estate Transaction
S.B. 239	F	2	William Patterson Cashill	Letter and proposed amendment